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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1143rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 6 March 1996, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

ORGANIZATION OF WORK (continued)

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eleventh, twelfth and thirteenth periodic reports of Hungary

OTHER MATTERS

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The meeting was called to order at 3.05 p.m.

ORGANIZATION OF WORK (continued)

Draft statement of the Committee on the Elimination of Racial Discrimination (CERD/48/Misc.12/Rev.1)

1. The CHAIRMAN invited the Committee to consider a revised draft statement condemning terrorist acts in Israel.

2. Mr. van BOVEN said that the wording of the second paragraph of the statement was not as clear as that of the original draft. The original was therefore preferable.

3. Mr. FERRERO COSTA said that, although he had suggested amendments to the second paragraph, he had no objection to the original wording being restored.

4. Mr. ABOUL-NASR said that the Committee should make it abundantly clear that it condemned any killing of innocent people. In the last line of the third paragraph, therefore, the phrase "these despicable acts of terrorism" should be replaced by "all acts of terrorism".

5. Mr. RECHETOV, supported by Mr. de GOUTTES, suggested that the last sentence of the second paragraph should be transposed to the end of the third, as amended by Mr. Aboul-Nasr.

6. Mr. GARVALOV said that, if the Committee agreed, the draft statement would be issued immediately to the press, the Secretary-General of the United Nations, the High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights and the parties directly concerned.

7. The CHAIRMAN said he took it that the Committee wished to adopt the draft statement, as amended by Mr. Aboul-Nasr and Mr. Rechetov, for transmission to the parties mentioned by Mr. Garvalov.

8. It was so agreed.

Submission of periodic reports

9. Mr. O'FLAHERTY (Secretary of the Committee) said that the Committee should decide whether to defer consideration of the periodic reports due from Pakistan, which had requested postponement until the Committee's next session, and from Nepal, which had asked for a review at a later date, and of the newly arrived report from India.

10. After a discussion in which Mr. ABOUL-NASR, Mr. SHERIFIS and Mr. FERRERO COSTA took part, the CHAIRMAN said he took it that the Committee wished to defer consideration of the periodic reports of Pakistan, India and Nepal.

11. It was so agreed.

12. Mr. van BOVEN requested information on the situation regarding the periodic report of Cambodia.

13. Mr. O'FLAHERTY (Secretary of the Committee) said that the Secretariat had been informed that the report was nearing completion and would be submitted in time for consideration by the Committee at the next session.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Eleventh, twelfth and thirteenth periodic reports of Hungary (CERD/C/263/Add.6; HRI/CORE/1/Add.11)

14. At the invitation of the Chairman, Mr. Naray, Mr. Szapora and Mrs. Hevesi (Hungary) took places at the Committee table.

15. Mr. NARAY (Hungary) said that, during the reporting period, Hungary had undergone profound changes in its political, economic, legal and social system. Hungary's basic legislation, including the Criminal Code and the Labour Code, had been amended to reflect the new situation. The establishment of the Constitutional Court had been a key factor in introducing the rule of law. The Court had jurisdiction to consider constitutional complaints, including those of individuals. New laws had also been adopted on such matters as freedom of conscience and religion, freedom of association, elections, emigration and immigration, the press and minorities. Hungary had ratified all the important human rights conventions and incorporated them in domestic law.

16. Pursuant to the Ombudsman Act of 1993, three parliamentary commissioner or ombudsman posts had recently been established, including one for human rights and one for national and ethnic minority rights. Parliamentary commissioners acted independently, either on their own initiative or on the basis of citizens' complaints concerning administrative injustice or maladministration on the part of governmental bodies or officials. They could approach the Constitutional Court for rulings on the constitutionality of the judicial interpretation of laws and could even propose the repeal or amendment of legislation affecting a large community of citizens. The Parliamentary Commissioner for national and ethnic minority rights was a member of the German minority living in Hungary. He could examine conflicts affecting minorities and initiate measures to prevent conflict.

17. Elections for local minority self-governing bodies had been held in November 1995. Eleven national and ethnic minorities had entered a total of 1,051 candidates. As a result of the elections, 61 local governments had been set up by Gypsies, 38 by Germans, 13 by Slovaks, 7 by Armenians, 6 by Croats, 5 by Poles, 4 by Greeks, 2 by Bulgarians and 1 each by Romanians and Slovenians. The Serbs and the Ukrainians had not entered candidates and the election for the single Ruthenian local government had been declared invalid. Of the elections held in 13 Budapest districts, only that of the Armenians in the 9th district had been declared invalid. Agreement had been reached on the allocation of premises for national minority self-governing bodies, which they would be entitled to use free of charge.

18. With regard to the Roma population, the Government had drawn up a programme of action for the Roma people in cooperation with the national Roma minority self-governing body. The programme would cover a number of areas, including education, employment and anti-discrimination measures. At the end of 1995, the Government had also set up a commission to coordinate activities in respect of the Roma minority and a public foundation to promote equal opportunities for Romas and provide assistance in the areas of education, housing and private enterprise.

19. The Act on the Media, adopted in December 1995, laid down stringent broadcasting rules, including the prohibition of incitement to hatred against individuals, peoples, nations, national, ethnic, linguistic or other minorities, churches or religious groups, and of the condemnation or deprecation of any person or group on racial grounds. The public broadcasting service was required to publicize the cultural values of national, ethnic or other minorities.

20. Pursuant to the Act, subsidies could be provided for programmes in the mother tongue of the national and ethnic minorities and for programmes presenting their life and culture. Article 26 (1) and (2) of the Act provided that the culture and language of national and ethnic minorities should be promoted through the provision of information in their mother tongue and, if necessary, through television subtitling or multilingual broadcasting. The national minority self-governing bodies decided how to use the air time allocated to them and their decision was final.

21. The President of the Republic of Hungary had proposed an amendment to the Penal Code to ensure more effective prosecution of racially motivated acts, which was likely to be adopted shortly. Hungary was expected to be the first country in Central and Eastern Europe to provide for compensation and/or the return of property confiscated from the Jewish population. Discussions were being held with representatives of the Jewish community on the establishment of a foundation which would also provide pensions.

22. Efforts had been made to conclude bilateral agreements with neighbouring countries on cooperation for the improvement of minority rights. Various classes of agreement on the subject had been concluded with Ukraine, Croatia, Slovenia and Slovakia, and an agreement was being negotiated with Romania.

23. The Government remained committed to providing temporary protection for refugees and asylum-seekers in accordance with its international obligations, and was prepared to participate in international operations for the early, voluntary and orderly return of refugees to Bosnia and Herzegovina under the Dayton Agreement.

24. Hungarian civil society was currently very active in the promotion of tolerance and understanding. A multicultural education programme had been introduced in secondary schools and should soon be followed by a special teacher-training course at universities. Hungarian society was becoming ever more tolerant, and the incidence of racially motivated crime continued to decline.

25. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) welcomed the information in section I of the report on constitutional and legislative reforms, including the declaration made under article 14 of the Convention, and on new legislation, particularly the Act on the Rights of National and Ethnic Minorities. With reference to article 2 of the Convention, he welcomed the adoption of a new policy on minorities, as reflected in the setting up of the independent Office for National and Ethnic Minorities, on which he requested further information. Since the Act did not cover the "new" minorities mentioned in paragraph 28, he hoped that the Government, bearing in mind the principle of equal rights for all minority groups, would consider ways of ensuring that such minorities were no worse off than those of longer standing. The Act contained commendable provisions which protected the right to national or ethnic identity, including the use of national languages and measures to promote them. Despite the progress mentioned in the oral presentation, however, the marginalization of a large part of the Gypsy population persisted, heightened by the current economic crisis, and discrimination against them, even by the police, reportedly remained widespread. The Committee required further information in that regard.

26. The Government was to be commended for making every effort to comply with its obligations under article 4. With regard to the Constitutional Court's annulment of part of article 269 of the Penal Code, however, the reasons adduced in paragraphs 53-56 of the report appeared to be based on a restrictive interpretation of article 4 and to be at variance with the Committee's general recommendation XV. While there was no denying the importance of freedom of expression and of the principle of proportionality, he hoped that the Government would take note of the Committee's views in that regard and reconsider its position on the full implementation of article 4, bearing in mind the need for international legal rules to be incorporated in domestic legislation. He was pleased to note from paragraph 60 that the President of the Republic felt it urgent to amend the Penal Code in order to make punishable the persecution of national, ethnic, racial or religious groups; he hoped that the Committee would be informed about the progress of the bill tabled in that regard.

27. While welcoming the provision of statistical data on relevant criminal offences he felt that, in certain cases involving clear violations of article 4 (a) and (b) of the Convention, the penalties imposed were disquietingly lenient; he hoped that future sentencing would be more in keeping with the obligations assumed under the Convention. He also hoped that the Committee would receive information about attacks on Gypsies, including a reported incident in the neighbourhood of Örkény on 21 May 1993, and about assaults on refugees from Bosnia and Herzegovina, including an incident at the Nagyatád refugee camp on 2 August 1993.

28. With reference to article 5, Hungary was to be congratulated on having become a country of asylum; he hoped that the Committee would be kept abreast of developments in that regard. He also wished to receive further information on the legal remedies available to foreigners in connection with entry, residence and immigration regulations.

29. With regard to paragraph 78 of the report, he wondered to what extent non-Hungarian citizens residing permanently in Hungary had availed themselves

of the right to vote granted by the new Election Acts, and whether there were any restrictions on that right. The new civil service regulations, outlined in paragraph 82 merited further elucidation.

30. In connection with article 6 of the Convention, he welcomed the safeguards introduced to ensure the availability of legal remedies, and commended the work of the National Assembly Commissioner of Civil Rights and the Constitutional Court. Hungary was making great strides with regard to compliance with article 7, especially in the fields of education, public information and minority group activities. The Committee should be provided with more detailed information on activities geared to publicizing the Convention for the benefit of minority groups, especially those on the fringes of society.

31. Mr. RECHETOV said that he, too, welcomed the information provided by the report on the rights safeguarded under the Hungarian Constitution, including those of national and ethnic minorities. With regard to the new policy on minorities referred to in paragraph 13, he wondered whether the effects would be felt uniformly among minorities or whether there might be disparities as a result of possible differential treatment of certain minorities in the past. In connection with paragraph 26, he expressed reservations regarding the criteria used for the definition of a national or ethnic minority.

32. With regard to paragraphs 34-37, he requested further details on the legislation and constitutional provisions relating to the autonomy and self-government of minorities. The Committee was always cautious about measures which might be deemed to foster self-determination or secessionist tendencies. Hungary's comments on that matter would be appreciated. He also wished to receive more detailed information on the agreements concluded with neighbouring States in respect of ethnic minorities, which had been mentioned in the oral presentation.

33. With reference to paragraphs 30-33 on minority rights, the maintenance of links with ethnic kin in other States was to be welcomed in many respects, but could have implications for national boundaries and even political stability; strict observance of the sovereign integrity and political independence of States was of paramount importance, and he wondered why that particular point had not been dealt with. Generally speaking, however, the fact that minority rights were increasingly covered by national legislation ought to enhance stability.

34. He found it difficult to understand, from a reading of paragraphs 51-56 of the report, why the Constitutional Court had ruled that incitement to hatred was a punishable offence under the Penal Code but insulting expressions and acts were not. The borderline between insulting behaviour and incitement to hatred was very thin. Those were complex issues requiring strict legal definition and regulation to ensure that comprehensive action was taken against all forms of racial discrimination. With reference to the new criminal offence of incitement to hatred dealt with in paragraph 51, he questioned the distinction drawn between the Hungarian nation and other national minorities or groups, which suggested that preference was given to the dominant national group from the standpoint of protection. He sought clarification of the priority implicitly granted to the Hungarian nation,

and drew the attention of the Hungarian authorities to article 1 of the Convention, which referred to "any" distinction or preference.

35. Mr. de GOUTTES said that Mr. Rechetov had raised some very important points which he hoped would be fully discussed by the Committee. He paid tribute to the Hungarian Government for accepting the procedure under article 14 of the Convention, for the work accomplished in establishing the rule of law and a pluralist, democratic society, as attested by Hungary's early admission to the Council of Europe, and for the far-reaching transformation of the legal system, bringing it into harmony with international human rights instruments, as described in paragraphs 2 and 3 of the report.

36. Of particular interest to the Committee were Hungary's highly innovative, progressive policy, unprecedented in international law, towards minorities, and the 1993 Act on the Rights of National and Ethnic Minorities. By affirming the collective rights of minorities and instituting a system of self-government, Hungary had adopted an avant-garde position in political terms, in contrast to other countries which recognized only the individual rights of persons belonging to minorities, thus giving priority to social integration over the "right to be different".

37. There were, however, persistent gaps or "grey areas" in legislation and practice. He was not sure that the arguments adduced by the Constitutional Court, as described in paragraphs 52 56 of the report, to justify its ruling that insulting expressions or acts did not constitute an offence, were consistent with the requirements of article 4 of the Convention and the Committee's general recommendation XV on the interpretation of that article. Paragraph 60 of the report suggested, however, that there might be some hope for a new amendment to the Penal Code in the context of the rising incidence of racial discrimination. He noted with some surprise that article 269 of the Penal Code made incitement to hatred against a national minority or the Hungarian nation a punishable offence. He asked whether that offence was consistent with the liberal policy adopted towards minorities and the rejection of assimilation, and whether it had given rise to any prosecutions or convictions.

38. Concerning the right to redress under article 6 of the Convention, while welcoming the facts and figures given, he noted with concern that most of the victims of discriminatory incidents were "persons of Gypsy origin" and "coloured people from foreign countries". The involvement of young people and, increasingly, groups of skinheads was particularly disturbing. The fact that there were few convictions and that a number of investigations had been halted prompted him to ask whether the police and judicial authorities were sufficiently diligent in pursuing investigations and prosecuting offenders.

39. He asked whether the statement in paragraph 85, that the labour centre issued labour permits for foreign persons if no adequately trained Hungarian labour was available and the employment of the foreigner was justified, did not amount to an admission that foreigners were given only jobs not wanted by Hungarians, thereby institutionalizing the concept of "national preference" in access to employment. Referring to paragraph 95, he asked what measures had been taken to ensure that legal remedies were available before international

forums in cases of individual complaints, particularly with a view to facilitating access to the individual complaints procedure under article 14 of the Convention.

40. Mr. ABOUL-NASR associated himself with the concern expressed about the situation of Gypsies in Hungary. Precise figures were needed on the size of the Gypsy population and on its representation in elected and official bodies. The commencement of negotiations with the Gypsy community seemed to be a case of too little, too late. He asked what practical changes had been made in the treatment of Gypsies, what their current situation was and to what extent the new legislation had corrected the ills of the past.

41. He wondered why there was no mention of Bosnians among the minorities listed in the report. Was it because there were no Bosnians in Hungary, because the Bosnians were Muslims, because of a master plan to divide Bosnia and Herzegovina between Croatia and Serbia or because Bosnians were not considered a minority?

42. He had been surprised at the statement by the representative of Hungary to the effect that Hungary had compensated Jews for property confiscated during the Second World War, there being nothing in the Convention to warrant singling out a particular group. Other groups, too, such as the Serbs, had suffered during the war, and there were those whose property had been confiscated under the communist regime. Had they also been compensated?

43. Mr. SHERIFIS, concurring with the analysis of the report by the Country Rapporteur, referred to the important changes that had taken place in Hungary. He particularly welcomed the fact that Hungary had made a declaration under article 14 of the Convention and had withdrawn its previous reservation with respect to article 22. A significant development was the process of organization of the national and ethnic minorities, referred to in paragraph 14. He asked for more specific information on the strengthening of the activity of organizations protecting the interests of numerically smaller ethnic groups.

44. Another very important development had been the adoption in 1993 of the Act on the Rights of National and Ethnic Minorities. The statement that 20 members of Parliament belonged to minorities had to be measured against the fact that the total number of members of Parliament was 386.

45. The information concerning autonomy for minorities was noteworthy but raised the very important issue of the right of self-determination. The Committee's position, which he believed to be unanimous, was that the exercise of the right of self-determination should never lead to dismemberment of a country or impair the territorial integrity or political unity of sovereign and independent States. He invited comments by the delegation on that question.

46. He requested clarification of the statement that "the minority policy of Hungary is not subordinated in any way to the minority policies of other countries with respect to the Hungarian minorities", which he took to mean that no reciprocity was required. The statement that the Republic of Hungary

was aware of the fact that the question of the realization of minority rights affected both foreign and security policy was also highly significant.

47. Credit was due to Hungary, a country with a large number of minorities, for its statement condemning racial segregation and apartheid in connection with article 3 of the Convention, and for the action taken to implement article 7 of the Convention.

48. Mr. DIACONU noted the far-reaching changes in Hungary's laws and institutions. As Hungary was a country in transition, allowance should be made for certain shortcomings and time was needed to assess the effectiveness of the new institutions. Noting the action taken by the Government to reverse the process of assimilation of minorities, he welcomed the frank admission of the adverse effects of forced assimilation, which had led to a loss of identity and to a significant decline in the number of members of minorities over the previous 60 years. He asked whether the Government was contemplating measures to ensure the recovery of lost identity, including names and languages.

49. The 1993 Act on the Rights of National and Ethnic Minorities constituted a bold new departure. Referring to the definition of a national and ethnic minority given in paragraph 26 of the report, he questioned the condition that such groups should have lived in Hungary for at least one century, which was an unduly stringent requirement compared with the length of time required in other European countries. That being said, the Act contained many provisions that went further than comparable legislation elsewhere in Europe, and the Committee would be most interested to know how it was being and would be applied in practice.

50. He also requested more statistical information on the distribution of minorities in Hungary: how many there were in each administrative area and whether they constituted the majority in any one place. It might be that they were so dispersed that the provisions of the Act were difficult to implement. In that connection, he was unclear about the functions and authority of the self-governing bodies mentioned in paragraphs 34-37 and about the difference between local and national self-government. Paragraphs 322-329 of document HRI/CORE/1/Add.11 outlined the functions, both mandatory and discretionary, of local governments. Self-governing bodies, on the other hand, appeared to have no real powers at all, beyond the organizational and management functions exercised by any NGO or political party.

51. He was concerned about the acts of violence directed against minorities, such as those referred to in paragraph 63 of the report, and wished to know what progress had been made on the amendment to article 156 of the Penal Code proposed in 1994. He also asked whether there was any legislation dealing with racial hatred, having found no reference to that matter in the report. The provisions described in paragraphs 49-51 and 57-59 did not meet the requirements of article 4 of the Convention.

52. The report said too little about education. The information contained in the relevant Fact Sheet (annex 3) predated the new legislation on minorities. It was hard to assess any progress that had been made. For example, the Fact Sheet stated that minority languages were taught as foreign languages in a

majority of schools. He wondered whether children from minority gr attend schools where their mother tongue was used, and whether mino had access to libraries or museums that housed books or exhibits re their own language and culture.

53. The report contained no statistics on the number of minority g represented on local state bodies or political parties. Nor was the information on the representation of numerically larger minorities.

54. He was concerned about the situation of Gypsies, 70 per cent o unemployed and who were the most frequent victims of attacks by skin others. He wondered whether any action had been taken on either sc

55. With regard to the possibility of minorities maintaining links ethnic kin abroad, his view was that they had every right to such li in no way prevented them from being loyal to the State. No question collective rights, such as the right to strike, was involved; they w exercising the right to be different from other groups in the countr

56. A careful reading of paragraph 362 of the core document showed Convention did not automatically form an integral part of Hungarian was concerned, however, about conflicts between international treati domestic legislation; it seemed that the Constitutional Court ruled case individually. Such a procedure could give rise to major anomal the Government should regularize the situation.

57. Mr. van BOVEN noted that the issue of minorities often had an international dimension. The seventh preambular paragraph of the Co was crucial in that respect. He understood that Hungary was coopera the High Commissioner for National Minorities of the Organization fo and Cooperation in Europe and he wondered whether there were any pla ratify the Council of Europe Framework Convention for the Protection National Minorities.

58. He commended the commemoration of the Holocaust victims, menti paragraph 48 of the periodic report, although the issues of compensa reparation should normally come under article 6 rather than article wondered whether more recent victims of racial hatred were entitled reparation as well.

59. Hungary was not fully in compliance with article 4; indeed, th provisions of article 4 (b), relating to organizations that promoted discrimination, were not even mentioned in the report.

60. In their enthusiasm for the market economy, former socialist c frequently failed to pay due regard to economic, social and cultural Yet minorities suffered most from the deprivation of such rights. F example, the report contained information on unemployment but no sta in relation to Gypsies in particular. The latter tended to be dismi readily than other workers, and three quarters of adult male Gypsies unemployed. A new generation was growing up whose employment prospe grim.

61. The report said nothing about housing or social welfare. He wondered how widely the Convention was known in Hungary. Had it been published? Did the public know that Hungary had made a declaration under article 14? Would the proceedings of the Committee be published? Did a national commission on the Convention exist?

62. With regard to article 7, he believed that more attention should be paid to the training of law enforcement officials. He was concerned at reports that excessive force had been used against refugees and asylum-seekers, that they were systematically harassed by the police and that little effort was made to arrest and prosecute skinheads who attacked them.

63. Lastly, he urged Hungary to ratify the amendment to article 8 (6) of the Convention, which had been adopted by the General Assembly.

64. Mr. GARVALOV said he had no quarrel with Hungarian legislation on minority rights, which reflected its internal requirements. Hungary's legislation on collective rights for minorities was in many ways more advanced than that of other European States. He wondered, however, whether the special rights granted to minorities were in conformity with article 1 (4).

65. In that connection, the distinction between "national" and "ethnic" minorities was unclear. Paragraph 14 of the report spoke of "numerically smaller ethnic groups". He wondered whether smaller groups were regarded as "ethnic" and larger ones as "national". The United Nations itself could not agree on a definition. As a signatory to the Council of Europe Framework Convention for the Protection of National Minorities, Hungary should take steps to define the term "national minority". Paragraph 26 purported to do so, but in fact provided merely a set of criteria, not a definition as such.

66. Mr. Náray, Mr. Szapora and Mrs. Hevesi (Hungary) withdrew.

OTHER MATTERS

67. The CHAIRMAN, noting that the Security Council had that morning issued a statement on Burundi, recalled that the Committee had been due to discuss Rwanda on the basis of a text drawn up by Mr. Valencia Rodriguez. In addition, Mr. Yutzis had suggested that the Committee might discuss Guatemala.

The meeting rose at 6 p.m.